



IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 22nd OF JUNE, 2026

WRIT PETITION No. 14329 of 2018

SHRI D.K. KAMTHAN

Versus

STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sunil Kumar Jain & Ms. Naincy Goyal – Advocates for petitioner.

Ms. Monica Mishra – Government Advocate for respondent/State.

ORDER

This petition, under Article 226 of Constitution of India, has been filed seeking following relief (s):-

“(a) That the impugned order dated 29-05-2016 (Annexure P/1) may kindly be ordered to be quashed and the amount which has been withdrawn from the pension of the petitioner in pursuance to impugned order dated 29-05-2018 may kindly be directed to be refunded to the petitioner, in the interest of justice.

(b) That, the charges framed against the petitioner vide order dated 30-03-2013 (Annexure P-6) may kindly be quashed, in the interest of justice.



(c) That, the respondents may kindly be further directed to pay all the retiral dues to the petitioner including full pension, gratuity, etc, in the interest of justice.

(c) That, any other writ or order or direction which the Hon'ble Court deems fit in favor of the petitioner may kindly be issued in the interest of justice.

(d) That, Costs of the petition may kindly be awarded.”

2. It is submitted by learned counsel for petitioner that petitioner stood retired from service after attaining the age of superannuation on 31/03/2013 from the post of Joint Collector, Dist. Morena. It is submitted that during the period 2001-02, petitioner was posted at Dabra, Dist. Gwalior on the post of Tahsildar and during this period some orders were issued by petitioner while officiating on the post of Tahsildar, Dabra, District Gwalior regarding issuance of Government lease (settlement) to Shri Satendra Kumar and Shri Abhay Kumar under 4.3 and clause 24 of Revenue Book Circular. The land was in small part and had been settled to nearby land owner for farming and not on the basis of adverse possession and therefore passing orders for lease, rules and regulations have been followed by the petitioner. However, prior to initiation of departmental enquiry against petitioner order of lease has been cancelled by respondent No.3 vide order dated 23-08-2011 and inquiry was suggested against petitioner. It is submitted that petitioner received notice dated 18-06-2012 regarding departmental enquiry from office of respondent No.1. Thereafter, petitioner submitted reply dated 11-07-2012 and thereafter without considering the reply, the charge-sheet was issued on 30-03-2013 i.e. one day prior to superannuation. Thereafter, petitioner filed reply dated 12-04-2013 and submitted that there was no loss to the Government as land being cultivated by the persons and, therefore, prayed for quashment of all the charges framed against him. Thereafter, Enquiry



Officer and Presenting Officer were appointed and during enquiry petitioner submitted applications dated 08-02-2016 and 29-02-2016 and demanded certain documents and details but respondents did not supply the documents mentioned in the representation/applications. Thereafter, Enquiry Officer submitted his enquiry report dated 30.08.2016 and petitioner submitted his reply to the enquiry report before the disciplinary authority and vide order dated 29.05.2018 the major penalty of withdrawal of 10% amount of pension for two years has been imposed upon petitioner. It is submitted that respondents have not supplied relevant documents to petitioner; no loss has been caused by petitioner to department; and the reply filed by petitioner has not been considered. It is further submitted that allegations made in the impugned order do not come under the definition of misconduct and also at the relevant point of time, petitioner was working as Tahsildar and he is entitled to the benefit of Judges (Protection) Act, 1985.

3. *Per contra*, it is submitted by learned counsel for respondent/State that charge-sheet was issued to petitioner alleging certain charges and after initiating the departmental enquiry against petitioner and after conducting enquiry proceedings, after examining witnesses, enquiry officer submitted his report. It is submitted that Enquiry Report reveals that charges levelled against petitioner were found proved, therefore, as petitioner was already retired on attaining the age of superannuation w.e.f. 31.03.2013, therefore, matter was referred to the State Government in view of Rule-9 of M.P. Civil Services (Pension) Rules, 1976 (for brevity “Rules, 1976) and ultimately State Government passed the order dated 29.05.2018 by stopping 10% amount of pension for two years in view of Rule-9 of Rules, 1976. It is submitted that petitioner was given full opportunity



of hearing in the departmental enquiry proceedings but he failed to establish that he had not committed misconduct, therefore, punishment order has rightly been passed. It is submitted that the scope of judicial review in a petition filed under Article 226 of the Constitution of India is very limited. On these premised submissions, learned counsel for respondent/State opposes the arguments advanced by learned counsel for petitioner by supporting the order impugned and prays for dismissal of instant petition.

4. Heard learned counsel for the parties and perused the record.
5. Before analyzing contentions of rival parties, it would be apt to reproduce relevant provision of Rule 9 of Rules, 1976 which goes as under:

“9. Right of Governor to withhold or withdraw pension. -

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time];

(2) (a) The departmental proceedings [xxx], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were



commenced, in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment :-

(i) shall not be instituted save with the sanction of the Governor; (ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings :

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government].

(3) No judicial proceeding, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension and death-cum-retirement gratuity as provided in [Rule 64], as the case may be, shall be sanctioned :

[Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of



the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time] :

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted :

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

(c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount, of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of Rule 43].

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."



6. From perusal of record, it is gathered that petitioner stood retired from service after attaining the age of superannuation on 31/03/2013 from the post of Joint Collector, Dist. Morena. During the period 2001-02, petitioner was posted at Dabra, Dist. Gwalior on the post of Tahsildar and during this period some orders were issued by petitioner while officiating on the post of Tahsildar, Dabra, District Gwalior regarding issuance of Government lease (settlement) to Shri Satendra Kumar and Shri Abhay Kumar under 4.3 and clause 24 of Revenue Book Circular. The land was in small part and has been settled to nearby land owner for farming and not on the basis of adverse possession and therefore passing orders for lease, rules and regulations have been followed by the petitioner. However, prior to initiation of departmental enquiry against petitioner order of lease has been cancelled by respondent No.3 vide order dated 23-08-2011 and inquiry was suggested against petitioner. Petitioner received notice dated 18-06-2012 regarding departmental enquiry from office of respondent No.1. Thereafter, petitioner submitted reply dated 11-07-2012 and thereafter without considering the reply, the charge-sheet was issued on 30-03-2013 i.e. one day prior to superannuation. Thereafter, petitioner filed reply dated 12-04-2013 and submitted that there was no loss to the Government as land being cultivated by the persons and, therefore, prayed for quashment of all the charges framed against him. Thereafter, Enquiry Officer and Presenting Officer were appointed and during enquiry petitioner submitted applications dated 08-02-2016 and 29-02-2016 and demanded certain documents and details but respondents did not supply the documents mentioned in the representation/applications. Thereafter, Enquiry Officer submitted his enquiry report dated 30.08.2016 and petitioner submitted his reply to the enquiry report before the disciplinary



authority and vide order dated 29.05.2018 the major penalty of withdrawal of 10% amount of pension for two years has been imposed upon petitioner. Respondents have not supplied relevant documents to petitioner; no loss has been caused by petitioner to department; and the reply filed by petitioner has not been considered. True it is that allegations made in the impugned order do not come under the definition of misconduct and also at the relevant point of time, petitioner was working as Tahsildar and he is entitled to the benefit of Judges (Protection) Act, 1985.

7. The advice of the Public Service Commission, relied upon by the State while passing the impugned order, was not supplied to petitioner, contrary to settled legal principles. No financial loss to the State has been proved, and there is no finding that the alleged misconduct was of such grave in nature as would warrant dismissal from service. In such circumstances, withholding of the petitioner's pension under Rules, 1976 appears to lacking in sufficient legal basis. Accordingly, these aspects require careful judicial scrutiny.

8. The judgment passed by the Apex Court in the case of **S.N. Narula Vs. Union of India and others**, reported in (2011) 4 SCC 591 has been followed by the Apex Court in the case of **Union of India and others Vs. R.P. Singh**, reported in (2014) 7 SCC 340. In the case of **R.P. Singh (supra)**, in para- 12, 21 and 23, it is held as under :

“12. We will be failing in our duty if we do not take note of the submission of Mr. W.A. Qadri that the decision in S.N. Narula case is not an authority because the Tribunal has set aside the order of the disciplinary authority on the ground that it was a non-speaking order. Be that as it may, when the issue was raised before this Court and there has been an advertence to the same, we are unable to accept the submission of Mr. Qadri. The said decision in S.N. Narula case is an authority for the proposition that the advice of UPSC, if sought and



accepted, the same, regard being had to the principles of natural justice, is to be communicated before imposition of the punishment.

21. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor. There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said Article mandatory. As we find, in T.V.Patel's case, the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An Inquiry Report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is precisely what has been laid down in the B.Karunakar case.”

23. We have referred to the aforesaid decision in B. Karunakar case in extenso as we find that in the said case it has been opined by the Constitution Bench that non-supply of the enquiry report is a breach of the principle of natural justice. Advice from the UPSC, needless to say, when utilized as a material against the delinquent officer, it should be supplied in advance. As it seems to us, Rule 32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service jurisprudence.”

9. As per Rule 30 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (for brevity “Rules, 1966”), every order, notice and other process made or issued under these rules shall be served in person on the Government Servant concerned or communicated to him by registered post. Despite the



aforesaid Rules, copies of relevant documents have not been supplied to petitioner. The relevant provision of the Rules, 1966 reads as under:

“30. Service of orders, notice etc. Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.”

10. Thus, as per this judgment, non-supply of the enquiry report is a breach of natural justice and advice from PSC should be supplied in advance and if the same is not done, the enquiry is vitiated on the count of violation of natural justice and in the present case, advice from MPPSC has not been supplied in advance, and as per Rule 30 of Rules, 1966 relevant documents were also not supplied, hence, the enquiry is vitiated on account of violation of natural justice.

11. Now, another aspect of the matter:

“Whether petitioner who was Tahsildar is entitled to Judges Protection Act, 1985 while performing *quasi* judicial function?

12. Section – 2 of the Judges (Protection) Act, 1985 defines about the word “**Judge**” which reads as under -

"2. Definition.-- In this Act "Judge" means not only every person who is officially designated as a Judge, but also every person-- (a) who is empowered by law to give any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or judgment which, if confirmed by some other authority, would be definitive; or (b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a)."



13. As per the said definition, any person who is empowered by law to give any legal proceeding a definitive judgment and any person who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in Clause (a) is a Judge.

14. In the present case, petitioner is empowered to give judgment, therefore, he is a judge as per definition given under the Judges (Protection) Act, 1985.

15. Section 3 of the Judges (Protection) Act, 1985 gives additional protection to Judges. The said Section reads as under :-

"3. Additional Protection to Judges.

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Judge for any act, thing or word committed, done or spoken by him, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner, the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal or departmental proceedings or otherwise) against any person who is or was a Judge."

16. As per this Section, some protection has been given to the Judge while discharging his duty as Judge. The definition of judgment which is given under Section 2 of the Judges (Protection) Act, 1985 is much wider and it includes an order which determines the rights of the parties, for the reasons given in it.

17. Petitioner, exercising his power under the M.P. Land Revenue Code, is a Judge and, therefore, he is entitled to protection under Section 3 (1) of the Judges



(Protection) Act, 1985 and no Court could entertain any civil or criminal proceedings against him for any act, thing or word committed, done or spoken by him, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function.

18. The Division Bench of this Court in the case of **State of M.P Vs. Shriniwas Sharma & Anr.** reported in **2005(2) M.P.L.J. 155** has held as under :-

“As per the settled legal position the officers who are discharging the duties as a quasi judicial authorities are protected under the umbrella of acts done in good faith. When law protects a judicial or quasi judicial authority in relating to his bonafide act then the concerned officer who discharges the duties cannot be brought in the net of the departmental enquiry unless something additional has been brought into existence. A mere mistake committed while passing a quasi-judicial order does not partake the character or nature of misconduct. The Tribunal has analyzed the said aspect in a great detail we perceive no reason to differ with the same.”

19. As per the said judgment, the officers, who are discharging the duties as a *quasi* judicial authorities, are protected under the umbrella of acts done in good faith.

20. Similar view has been taken by this Court in the case of **Balram & Anr. Vs. Aswani Kumar Yadav & Anr.** reported in **2001 (2) M.P.H.T. 330** as well as the judgment passed by this Court in the case of **State of M.P. Vs. Rajeev Jain** reported in **2001 (4) M.P.H.T. 58**.

Thus, in the light of the aforesaid judgments and enunciation of facts and circumstances of the case, petitioner being Tahsildar at the relevant point of time was entitled to receive additional protection to Judges given under the Judges (Protection) Act, 1985.



21. Now, coming to the last Issue i.e. whether charges framed against petitioner come under the definition of misconduct?

22. As per charges mentioned in the impugned order, they do not come within the definition of misconduct. As per the Division Bench judgment passed in the case of **S.D. Bind v. Union of India and Others, 2015 (1) M.P.L.J. 74**, at best, the act of petitioner may fall under the category of carelessness or negligence. The relevant extract of order passed in the case of **S.D. Bind (supra)** is reproduced below for ready reference and convenience:-

15. That apart, another aspect of the matter warrants consideration. The irregularities which is found against the petitioner is only non-following of certain procedure in the matter of awarding contract. The question is as to whether such an irregularity in the matter of following the procedure can be termed as a misconduct. The Supreme Court has considered the aforesaid aspect in the case of *Union of India v. J. Ahmed*, (1979) 2 SCC 286 : AIR 1979 SC 1022 which has been followed again by the Supreme Court in the case of *Inspector Prem Chand v. Govt, of National Capital Territory of Delhi*, (2007) 4 SCC 566, wherein it has been held by the Supreme Court that merely lack of efficiency, failure to attain the highest standard of administrative ability or negligent or careless want of dealing with a matter on one isolated may not constituted a misconduct for which punishment can be imposed.

16. In the present case apart from the fact that the Division Bench has made the observations as reproduced hereinabove and interfered with the imposition of cost, it found that there was certain discrepancy in the guidelines laid down and, therefore, in paragraph 9 fresh guidelines for future action was issued. Once this is the factual scenario then merely because the petitioner failed to follow the guidelines for once, it cannot be said that the petitioner has committed misconduct in the matter. At best action of the petitioner may fall in the category of careless or negligence in the matter of dealing with the case once an isolated occasion and if the principles laid down by the Supreme Court as indicated in the case of *J. Ahmed*



(supra) is applied, we are of the considered view that allegations levelled even do not amount to misconduct for which action can be taken.

23. **There is nothing on record which shows that petitioner had ill-motive while exercising his quasi judicial function regarding issuance of government lease (settlement).** Thus, the act of petitioner cannot be termed as misconduct as per the judgment rendered by Hon'ble Apex Court in the case of **Inspector Prem Chand Vs. Govt. of NCT of Delhi and others** reported in **(2007) 4 SCC 566**, para 12 of which is quoted below for ready reference and convenience:

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *Union of India v. J. Ahmed* [(1979) 2 SCC 286 : 1979 SCC (L&S) 157] whereupon Mr Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292-93, para 11)

“11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pearce v. Foster* [(1886) 17 QBD 536, 542 : (1886-90) All ER Rep Ext 1752]). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)* [(1959) 1 WLR 698]). This view was adopted in *Shardaprasad*



Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur [(1959) 61 Bom LR 1596] and Satubha K. Vaghela v. Moosa Raza [10 Guj LR 23] . The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

‘Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct’.

Emphasis supplied

24. Having given anxious consideration to the totality of the facts and circumstances of the case and in light of the pronouncements referred to hereinabove, this Court is of the considered opinion that though mandatory consultation with the State Public Service Commission was undertaken, however, the copy of the said advice was not supplied to petitioner and petitioner was not given opportunity of hearing in respect of the said advice. The petitioner, discharging quasi-judicial functions, is entitled to the protection available under the Judges (Protection) Act, 1985. There is nothing on record to indicate any misconduct or *mala fide* conduct on the part of petitioner. Furthermore, pension is a proprietary right as has been held by the Court in catena of judgments. Such a proprietary right is not required to be taken away without following proper procedure of law. If such a drastic penalty of withholding of pension is required to be imposed on any such government servant, definite finding is required to be recorded with respect to the gravity of the misconduct and the ultimate result of the said misconduct. As nothing is found in this respect, no such consideration is done by respondents while imposing penalty upon petitioner, hence, order dated 29-05-2018 (Annexure P-1) cannot be sustained.

25. Consequently, present petition stands ***allowed and disposed of*** in the following terms:



- (i) Impugned order Annexure P-1 dated 29-05-2018 is hereby quashed;
- (ii) Respondents are directed to refund the withheld 10% pension of petitioner of two years with interest at the rate of 6% *per annum* from the date of retirement till actual payment is made within a period of three months from the date of receipt of certified copy of this order, failing which this amount would carry interest at the rate of 12% per annum from the date of retirement till actual payment is made.

(Anand Singh Bahrawat)
Judge